S. HRG. 98-248

NOMINATIONS OF JUDITH W. ROGERS AND A. FRANKLIN BURGESS, JR.

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF JUDITH W. ROGERS TO BE AN ASSOCIATE JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS; AND A. FRANKLIN BURGESS, JR., TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JULY 26, 1983

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NOMINATIONS OF JUDITH W. ROGERS AND A. FRANKLIN BURGESS, JR.

TUESDAY, JULY 26, 1983

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met at 9:30 a.m. in room SD-342, Dirksen Senate Office Building, Hon. Charles McC. Mathias, Jr., presiding.

Present: Senator Mathias.

OPENING STATEMENT OF SENATOR MATHIAS

Senator MATHIAS. The committee will come to order.

The committee's meeting today is to hear testimony on nominations to the courts in the District of Columbia. On Wednesday, June 29, 1983, President Reagan nominated Ms. Judith W. Rogers to be associate judge of the D.C. Court of Appeals and Mr. A. Franklin Burgess, Jr., to be associate judge of the D.C. Superior Court.

I believe Ms. Rogers and Mr. Burgess are in the room, so I will ask you if you will come to the table together because I have certain questions which are of a general nature. I think we can conserve time by asking each of you to respond to the same question.

I would like to thank each of the nominees on behalf of the entire committee for the cooperation that they have already given to the staff and members of the committee in connection with the preliminary inquiries. These nominations have been the subject of careful review.

In 1978, the committee adopted rule 8 which contains the requirements which must be met on all confirmations subject to committee evaluation. The rule requires that the committee conduct an inquiry into the nominee's experience qualifications, suitability and integrity to serve in the position for which he or she has been nominated. The committee believes that this rule insures the thorough and yet reasonable review of a nominee's background and qualification. These include requests for detailed information on education, employment and professional achievements as well as complete financial statements.

The financial statements and biographical information, of course, are available for the members of the committee. The committee has reviewed all this information as well as reports, and, of course, each nominee has been interviewed.

So I am going to ask each of you now to rise and take your oath before we propound several questions.

Will you raise your right hand? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Ms. ROGERS. I do.

Mr. BURGESS. I do.

Senator MATHIAS. The record will reflect that each nominee has taken the oath.

These questions are of a very general nature, and I will ask Ms. Rogers first to answer and then Mr. Burgess if he will answer. Is there anything of which you are aware in your background, professional or personal, which you think might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. ROGERS. No; I do not, Mr. Chairman.

Senator MATHIAS. Mr. Burgess?

Mr. BURGESS. No, sir, I do not.

Senator MATHIAS. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging your responsibilities as a judge in the court to which you have been nominated?

Ms. ROGERS. No; I do not.

Mr. BURGESS. No, sir.

Senator MATHIAS. If confirmed by the Senate, would it be your intention insofar as you could see into the future to serve the full 15-year term of office?

Ms. ROGERS. Yes; it is.

Mr. BURGESS. Yes, sir.

Senator MATHIAS. No one can see precisely, but I think it's important that you have that commitment in mind.

Have you ever been involved in civil litigation or an administrative or legislative proceedings of any kind, either as plaintiff, defendant, respondent, a witness or a party in interest which is directly or indirectly related to the office to which you are nominated?

Ms. ROGERS. Mr. Chairman, my only involvement has been as the corporation counsel where, upon request by the D.C. Court of Appeals, my office will, on occasion, represent the court.

Senator MATHIAS. Mr. Burgess?

Mr. BURGESS. No, sir, I have not, other than in my capacity as a lawyer for the Public Defender Service representing clients.

Senator MATHIAS. Those are all matters of record, of course.

Mr. BURGESS. Yes, sir.

Senator MATHIAS. Have you or any member of your immediate family ever been involved in any controversy or litigation with tax authorities of the Federal Government, the District of Columbia, or any State or local government?

Ms. ROGERS. No.

Mr. BURGESS. No, sir.

Senator MATHIAS. How would you propose to resolve any potential conflict of interest that might arise during your tenure on the bench?

Ms. ROGERS. Mr. Chairman, I have indicated that, if I am confirmed, I would recuse myself from participating in any case that would come before the court of appeals which was pending in the

Office of the Corporation Counsel prior to the time of my appointment. This is also true for any matter in which I was personally and substantially involved. Because of the volume of work in the Office of the Corporation Counsel, I think it will be necessary, at least for the immediate future, to set up a checking system, and I would do that.

Mr. BURGESS. Mr. Chairman, I have stated I will recuse myself from all cases in which any person is a defendant who was a client of any attorney in the Public Defender Service when I was employed by that agency.

Senator MATHIAS. Let me ask Ms. Rogers, first, if you would tell the committee something of your personal background, your education and employment experience, with a view to highlighting those points that you feel qualify you to be a member of the Court of Appeals of the District of Columbia?

TESTIMONY OF JUDITH W. ROGERS, NOMINEE TO BE AN ASSOCIATE JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS AND A. FRANKLIN BURGESS, JR., NOMINEE TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. ROGERS. Mr. Chairman, I am a graduate of Radcliffe College and Harvard Law School. I think that my legal background and my employment experience are relevant to the position I seek. I was a law clerk for a judge of a District of Columbia court and served as an assistant U.S. attorney for the District of Columbia. I followed that by working as a legal services attorney, then as an attorney in the Justice Department, and later as general counsel for a congressional commission, cochaired by you and Congressman Ancher Nelsen, which did a lot of the background work leading to the congressional action in the 93d Congress on a home rule act.

By that time I was employed by the District Government, working with the local government on the home rule legislation. When that law was passed by the 93d Congress, I became a special assistant for legislation to the then-Mayor Walter E. Washington and had the opportunity to work on carrying out the home rule law. Since 1979 I have been the corporation counsel for the District of Columbia.

In almost a unique manner, I have had the opportunity to work as a Federal attorney, a District of Columbia attorney, and for a short while as a legal services attorney; to see how the court system in this community works; and to understand different interests from various perspectives. Indeed, I have been involved directly in the creation of the District of Columbia court system and the home rule government, and, during the last 4 years, in making the Office of the Corporation Counsel responsive to its mandate. I believe this experience has provided me with an understanding of what was intended when the court system was created in 1970 and of what was intended by the delegation of authority by the Congress to the home rule government.

Furthermore, I think this background and experience have exposed me to the types of issues and problems which would face a court of appeals in this jurisdiction. My experience has been broad

enough to prepare me well for the position I seek. I also think that I have the capability, if appointed to the court, for further growth and development. In short, I think my background and experience provide me with the perspective and the skills and knowledge which are required to serve effectively on the court of appeals.

Senator MATHIAS. How much time have you spent in the courtroom, would you say?

Ms. ROGERS. As an assistant U.S. attorney, I was in the courtroom, generally, for 3 out of every 5 days of the week for approximately 3 years, trying misdemeanor cases before juries as well as before the court, appearing both in the local court and Federal court systems, at the trial and appellate levels. In the legal services program in San Francisco, I also appeared in Federal court. Other than an argument in 1979 before the full D.C. Court of Appeals sitting en banc my appearances in recent years have been limited to emergency proceedings; that is, matters which may come up on a Saturday or Sunday. I believe that as a result of my experience as an assistant U.S. attorney and in supervising the attorneys in my present office, I am familiar with the court system, its problems as well as its progress since 1970.

Senator MATHIAS. How would you relate this litigation experience to service on the court of appeals?

Ms. ROGERS. I think it gives me a perspective on some of the problems facing the trial court: understanding what the trial judges are grappling with and, hopefully, some appreciation of what is sometimes described as the "real world" as well as what is often referred to as the "ivory tower" of the appelate courts.

I think it is important for an appellate judge to have some knowledge of the local court system and some understanding of what types of issues are before the court of the circumstances under which the courts are forced to deal with these issues.

Senator MATHIAS. You have mentioned supervising the younger attorneys who come into the office. I personally believe that the bench should be a major educator of young lawyers.

There is a great deal that you cannot learn in law school that you have to learn in practice. But you have to usually learn it from somebody, and I have a conviction that judges should be educators as well as judges.

I wonder if you think that there is some responsibility for the bench with respect to education?

Ms. ROGERS. Yes; I do. I think at the appellate level, it differs somewhat from the trial courts. I would suggest that at the appellate level it would be more in the area of making certain that the record is complete as well as asking for additional briefing of issues of concern to the court. I think the appellate judge's responsibility is to decide the case before the court and make clear its resolution of the dispute and its rationale. Thus, in that sense, I see the appellate court as an educator. On the other hand, for a trial judge, I see the educational role as a more direct involvement.

Senator MATHIAS. In the current day-to-day hurly-burly of the court, I think that is a good distinction. I suppose that raises the question of judicial temperament. Some very good men and women in the world, who can do extraordinary things in other ways, aren't

necessarily good judges because they don't have judicial temperament.

Whatever that is. What is it, in your mind?

Ms. ROGERS. I would suggest, Mr. Chairman, that it is the ability to treat all persons who come before the court in a fair and impartial manner; to decide the case before you on the facts presented and on the law to the best of your knowledge and understanding. I also think that there is a responsibility as a member of the bench to think of the institution of the court and what it represents, and in that sense, I think judicial temperament involves both the ability to work well with your colleagues as well as with members of the bar who are appearing before the court.

I would hope that the type of experience I have had—which involved working with many different types of people who had very strongly held points of view, trying to move forward with a consensus when possible, and, then, asserting your position and moving forward and, yet, in the future still being able to work with the people with whom you have disagreed—would add up to what I think are the important qualities of judicial temperament.

Senator MATHIAS. I would agree. I think that is a good definition.

Mr. Burgess, would you briefly highlight your education and experience? Tell us why you think you are qualified to be a member of the superior court.

Mr. BURGESS. Be glad to, Mr. Chairman.

I was graduated from Princeton University and Harvard Law School, and those are the basic——

Senator MATHIAS. This is a big day for the Harvard Law School, isn't it?

Mr. BURGESS. I suppose so.

Senator MATHIAS. To put two graduates on the bench in 1 day.

Mr. BURGESS. Yes, sir.

As far as my other experiences are concerned, if there is any point to it—and I think there is a point to it in terms of your question—it is that I believe that, over the years, I have had a broad and deep experience in the matters which will come before me as a judge.

Let me explain that. After I finished college, I went into the Peace Corps for a couple of years in Thailand and learned the culture of the people there. I have worked in different kinds of law offices, both as an intern and as a lawyer.

I have worked in the South and I have worked in the North; I have worked in small law firms; I have worked in a big law firm in Boston for 4 years in which I learned the civil side of law.

Senator MATHIAS. Which office was that?

Mr. BURGESS. That was Palmer & Dodge. That is a large law firm in Boston, and now I have worked at the Public Defender Service for the past 6 years, most of the time as a trial attorney in the court that I am a candidate to be a judge of.

So I think that I have learned a lot, perhaps not as much as I will learn as a judge, but certainly something about the law in this broad experience.

I should also mention that I was a law clerk to a very fine judge who was a district judge in Boston, Mass., and now is a chief judge of the First Circuit Court of Appeals, Levin Campbell.

I served with him both when he was a district judge and when he was a circuit judge. I had a chance to watch him on a daily basis and see a person who I think personifies what Ms. Rogers describes as judicial temperament.

In all of these things, Mr. Chairman, I think I have developed some understanding of people, some understanding of the law, and some understanding of the way our courts work here in the District of Columbia.

Senator MATHIAS. You have described the different legal associations you have. How much litigation experience did you have?

Mr. BURGESS. I have always been in litigation since I practiced law. When I was with Palmer & Dodge, I was, except for the first year where I rotated among all the departments of the firm, in the litigation department, and I did civil litigation the majority of the time in both the Federal court and the State courts.

Since I came to the Public Defender Service, I have done almost exclusively criminal litigation, and I have done at lot of trial work. I have appeared in court pretty much as Ms. Rogers said, most of the days of any week while I was in the trial department, and I have had several jury trials. Since I have become chief of the Appellate Division of the Public Defender Office, I have appeared in appellate courts on a regular basis, both as a supervisor and as an oral advocate.

Senator MATHIAS. What is your definition of "judicial temperament?"

Mr. BURGESS. Well, I think it would be pretty much what Ms. Rogers said. I think she summarized it very well.

Senator MATHIAS. Almost a classic definition of judicial temperament?

Mr. BURGESS. I really couldn't add very much to what she said. I think she stated it very well.

I would just add that I think fairness in court to people is, in my judgment, the most important part of being a judge, and if one can have that sense while he is or she is doing his or her job and still maintain the kind of decisiveness that is necessary in a judge, you have pretty much got the essence of a judge, it seems to me.

Senator MATHIAS. I see that the Senator from South Carolina, Mr. Thurmond, has entered the room. I wonder if he has any questions or comments that he would like to make?

Senator THURMOND. Mr. Chairman, I was to introduce Mr. Burgess.

Senator MATHIAS. We are all lawyers here, and we know that in the courtroom you can do things nunc pro tunc.

Senator THURMOND. Thank you, very much.

TESTIMONY OF HON. STROM THURMOND, U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Mr. Chairman, today, I am very pleased to introduce Mr. A. Franklin Burgess, Jr., who has been nominated by President Reagan to be an associate judge of the D.C. Superior Court.

Frank Burgess is currently the Chief of the Appellate Division of the Public Defender Service in Washington, D.C. In this capacity,

he has served most ably, as he has in other positions of responsibility in the field of law for the past 12 years. He is a very capable attorney, and I believe he will become a distinguished judge of this court.

A native of Greenville, S.C., Frank Burgess received his undergraduate degree from Princeton University and earned his law degree from the Harvard School of Law. After graduating from law school, he temporarily clerked with the firm of Kreiger, Chodash & Politan in New Jersey. In 1972, he became a clerk for Judge Levin H. Campbell of the U.S. District Court for the District of Massachusetts. He then moved with Judge Campbell when the judge was appointed to the U.S. Court of Appeals for the First Circuit.

In 1973, he joined the law firm of Palmer & Dodge in Boston. He began work as a staff attorney with the Public Defender Service in Washington, D.C., in 1977 and was appointed as Chief of the Appellate Division in August 1982.

Mr. Chairman, I was pleased to recommend Mr. Frank Burgess to President Reagan for appointment to the District of Columbia Superior Court. I have known him and his family for many years. Frank follows in the tradition of his father, Al Burgess, who is also an able and outstanding attorney.

Mr. Chairman, I am confident that Frank Burgess will serve our Nation well as an associate judge of the District of Columbia Superior Court. I appreciate your giving me the opportunity to speak in his behalf today.

Thank you, Mr. Chairman.

Senator MATHIAS. Thank you, Mr. Chairman.

Senator THURMOND. Any questions, I will be glad to try to answer.

Senator MATHIAS. I value your statement, and your opinion on Mr. Burgess. It will be an important part of the record of this hearing.

Senator THURMOND. Thank you, very much.

Senator MATHIAS. Thank you, very much.

Since we are on the subject of Mr. Burgess, is there anyone else in the room who has any testimony or statement with regard to Mr. Burgess' nomination?

[No response.]

Senator MATHIAS. If not, Mr. Burgess, let me congratulate you and wish you a long and successful career on the bench.

Mr. BURGESS. Thank you, very much, Mr. Chairman.

Senator MATHIAS. Thank you.

Is there anyone in the room that has anything further to say with respect to the nomination of Miss Rogers?

Mr. MCGEAN. Senator, I am Mr. McGean to appear as a witness in opposition.

Senator MATHIAS. We will give you an opportunity in just a moment.

Ms. Rogers, let me congratulate you and wish you a long and successful career on the bench.

Ms. ROGERS. Thank you, Mr. Chairman.

Senator MATHIAS. Thank you, very much.

I might say to both of you that should the necessity arise before final Senate action, we may, of course, need to ask further ques-

tions. I don't anticipate that, but it is always a possibility, and I would feel remiss if I didn't at least suggest that possibility.

Thank you, very much.

Mr. McGean?

Mr. McGEAN. Senator, I have submitted a statement in opposition to your committee staff.

Senator MATHIAS. Yes; I have a statement.

Mr. McGEAN. I don't want to take up the committee's time any more than necessary. I think the paper——

Senator MATHIAS. I would be glad to have the full statement submitted as a part of the record and you can summarize it as briefly as you could.

TESTIMONY OF DONALD CARROL McGEAN, ATTORNEY

Mr. McGEAN. Sir, the complaint or the papers I submitted to the committee staff raise three issues with regard to Ms. Rogers' qualifications to sit on the court of appeals. All three of the issues arise out of grievance proceedings, excuse me, Senator, one of which I was personally involved in as a respondent, two of which I am involved in as the charging party.

The issues arise out of the handling of these grievances in the U.S. District Court for the District of Columbia, the Federal court. Ms. Rogers, as was reported to me, is a member of the grievance committee, and my primary complaint arises from her participation in the recommendation of the grievance committee of the U.S. district court in attorney grievance docket 80–11, the reciprocal proceedings against me in the U.S. district court. That document is not an accident. It is a doucment that was designed and calculated to mislead the judges of the Federal court.

It was a document designed, in my opinion, to cover up misconduct on the D.C. Court of Appeals.

Participation in that, as far as I'm concerned, demonstrates that Ms. Rogers does not have impartiality, that she does apply principles of law based on class status. If you are in or within her circle, you will be treated well. If you are without, not in her circle, you will not be treated well.

I think the documents speak for themselves. There are—I have other documents. It is a very, very thick and full record of proceedings against me, but if you have any other questions, I would be more than happy to answer them or supply any other document you or your staff might want.

Senator MATHIAS. In what capacity was Ms. Rogers acting at the time of your complaint?

Mr. McGEAN. The records indicate that she was a member of—an attorney member of the nine-man, nine-person grievance committee of the U.S. district court when in October of 1982 that committee filed a report and recommendation to the judges of the court in a reciprocal proceedings against myself.

Senator MATHIAS. How was the decision of the committee taken, by majority vote of the committee?

Mr. McGEAN. Unanimous; I was advised unanimous, and there were not dissenting opinions of nonparticipations noted on that document.

Senator MATHIAS. So that the position taken by Ms. Rogers was the same position as taken by all the other members of the grievance committee?

Mr. MCGEAN. Yes, but I might add, your honor—Senator—I am used to talking to judges. I might add, Senator, that that recommendation was rejected en toto by the judges of the U.S. district court. My response to that recommendation was served on all of the judges of the U.S. district court and the three judge grievance panel less than approximately 5 weeks after they filed their report, they rejected it en toto, dismissed all proceedings against me.

Senator MATHIAS. You have supplied the committee not only with your own statement, but with a copy of the proceedings in the District of Columbia Bar Hearing Committee No. 4, which bar docket No. 317-78. Would you like that also to be a part of the record in this proceeding?

Mr. MCGEAN. Yes; those are basically exhibits demonstrating the evidence that was before the grievance committee of the U.S. district court.

Senator MATHIAS. I will direct that the exhibits [1] as well as your statements be a part of the record.

Mr. MCGEAN. Thank you, sir.

Senator MATHIAS. Thank you very much.

[Mr. McGean's prepared statement follows:]

PREPARED STATEMENT OF DONALD CARROL MCGEAN

To: The Honorable Senator Members of the United States Senate Committee on the District of Columbia.

My opposition to the appointment of Judith W. Rogers to a judgeship on the District of Columbia Court of Appeals is predicated on what I maintain was unethical conduct on her part with respect to an Attorney Discipline Proceeding against myself in the United States District Court for the District of Columbia, identified as Attorney Grievance Docket 80-11, and a collateral grievance which I had filed in the United States District Court against those involved in the proceedings against me in the District of Columbia Court of Appeals.

I have been advised by your Committee staff that I should not attempt to relitigate the proceedings against me in the District of Columbia Court of Appeals. I do not intend to do such, but in order to properly understand my complaint against Judith W. Rogers, the facts arising from those proceedings must be set forth.

In January, 1979, one Richard Lee Mohler filed a complaint against me with the office of Bar Counsel of the District of Columbia Court of Appeals Board of Professional Responsibility. Based on his allegations, a Specification of Charges issued against me on May 23, 1979, a hearing was held on July 25, 1979, and on December 3, 1979, the Hearing Committee issued its decision finding that I had engaged in improper conduct. On February 18, 1980, I had oral argument on my appeal of that decision before the Board of Professional Responsibility (herein referred to as the BPR) and on April 11, 1980, the BPR issued its decision upholding the finding of the Hearing Committee. In September, 1980, oral argument was had before the judges of the court of appeals, and on November 6, the court of appeals upheld the finding of a violation and suspended me from the practice of law for a period of one year and one day, effective December 8, 1980.

In accord with practice, the court of appeals sent a copy of its order of suspension to the United States District Court for the District of Columbia (herein referred to as the U.S. District Court) and on December 30, 1980, that Court issued an Order To Show Cause against me as to why reciprocal discipline should not be imposed. On February 5, 1981, I responded to the Order To Show Cause, and thereafter, as other evidence was discovered in support of my position, this evidence was also submitted to the U.S. District Court.

The evidence before the U.S. District Court showed:

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[1] The exhibits referred to may be found in the committee files.

I. That the judges of the court of appeals had knowingly and deliberately rejected the Congressional mandated jurisdiction prerequisite set forth in Title 11-2503(b) of the District of Columbia Code which requires all grievance complaints to be in writing and "under oath," by adopting a rule (BPR Rules, Chap. 3, Para. 2) stating that "Verification of the complaint shall not be required."

II. That because of the court of appeals rejection of the Congressional mandate in Title 11-2503(b), Mr. Mohler, the complainant, and Mr. Houston, with whom Mr. Mohler had conspired, were unrestrained in filing false charges against me.

III. That in accord with their conspiracy, Mr. Mohler and Mr. Houston gave perjurous testimony against me.

IV. That there was evidence of a close professional, business, financial and personal relationship between various members of the court of appeals disciplinary system in that:

(a) Henry S. Ruth, Jr., was Chairman of Hearing Committee No. 4 in my case. (See Ex. A, attached.[1])

(b) Richard M. Sharp was the second "Substitute" attorney member of Hearing Committee No. 4 in my case. (See Ex. A, attached.[1])

(c) Lawrence J. Latto was Chairman of the BPR on July 25, 1979 (hearing date), February 18, 1980 (oral argument to the BPR), and April 11, 1980 (BPR decision date), and as Chairman, presided over the BPR and participated in my appeal of the decision of Messrs. Ruth and Sharp. (See Ex. B, attached.[1])

(d) On July 25, 1979, February 16, 1980, and April 11, 1980, Lawrence J. Latto, Henry S. Ruth, Jr. and Richard M. Sharp, were all partners in the law firm of Shea and Gardner of Washington, D.C. (See Ex. C, attached.[1])

(e) As of July 25, 1979, and February 18, 1980, Messrs. Latto and Sharp had been associated with each other in the firm of Shea and Gardner for at least ten (10) years and since 1970. (See Ex. D, attached.[1])

(f) Henry S. Ruth, Jr. became associated with the firm of Shea and Gardner and Lawrence J. Latto and Richard M. Sharp on or about January 2, 1979, and that prior to this time, he was employed by the United Mine Workers Pension Fund and was a member of the District of Columbia Court of Appeals Disciplinary Board since 1979. (See Ex's C and E, attached.[1])

V. That the following facts necessarily proceed out of and follow from the facts set forth in IV, above:

(a) That Bar Counsel Grabowsky and Deputy Bar Counsel Yourman, during all stages of the proceedings against me, had to have been aware of the close professional, business, financial and personal relationships between Messrs. Latto, Ruth and Sharp.

(b) That some, if not all, of the other members of the BPR, during the course of the proceedings against me, had to have knowledge of the relationships between Messrs. Latto, Ruth and Sharp.

(c) That some, if not all, of the judges of the court of appeals, during the course of the proceedings against me, had to have had knowledge of the close relationships between Messrs. Latto, Ruth and Sharp.

VI. That the following ethical considerations were presented to the U.S. District Court by the above described facts:

(a) That the very fact that Messrs. Ruth and Sharp, attorneys from the same law firm, one of whom had ten (10) years seniority over the other, agreed to sit on the same tribunal, constituted a serious conflict of interest, the opportunity for undue influence was unrestrained.

(b) The fact that these two attorneys agreed to sit on a tribunal with full knowledge that any decision they would render would be appealed to a BPR chaired by their most senior partner was equally unethical.

(c) That Lawrence J. Latto's appointment of two junior members of his firm to a hearing committee and presiding over and participating in an appeal of their decision shows an utter lack of ethics and morals.

(d) That if either Bar Counsel Grabowsky or Deputy Bar Counsel Yourman was aware of the relationships between Latto, Ruth, and Sharp, the conduct of these two individuals, or either of them, both of whom are paid, not out of appropriated funds, but out of funds collected as dues from the members of the Bar, in prosecuting a member of the Bar before a tribunal they knew to be "stacked" and then defending an appeal from that "stacked" tribunal before a BPR chaired by the very man responsible for the "stacking," constitutes a serious "obstruction of justice."

The evidence cited above and the conclusions to be drawn therefrom, were all before the U.S. District Court in the reciprocal proceeding against me. The Commit-

[1] The exhibits referred to may be found in the committee files.

tee on Grievances of that Court had my case under consideration from October 1981, and it was not until October 20, 1982, that the Committee on Grievances issued its report and recommendations to the Judges of the Court. Judith W. Rogers was a member of that Committee. Each member of that Committee had the right to join in the report, write a concurring report, write additional comments, or to write a dissent to the report. None did, and I have been advised that the report filed with the Court was unanimous. (See Ex. F, attached.[1])

Let us now examine that report in light of the record before the U.S. District Court.

1. The willful refusal of the judges of the court of appeals to abide by the mandates of 11-2503(b): Silence.

2. The perjurous testimony of Mohler and Houston: Silence.

3. The fact that Ruth and Sharp sat on the same hearing committee: "Unwise."

4. The fact that Ruth and Sharp ignored documentary evidence showing that Mohler and Houston had committed perjury: Silence.

5. The fact that Ruth and Sharp sat on the same Committee knowing an appeal would go to a BPR chaired by their senior partner: Silence.

6. The fact that Latto appointed Ruth and Sharp to the hearing committee: Silence.

7. The fact that Latto presided over and participated in my appeal of the decision of Ruth and Sharp. Silence.

8. The fact that the BPR affirmed the decision of Ruth and Sharp on a ground that had not been alleged or litigated and of which the members of the BPR could not have possessed knowledge. Silence.

9. The failure of Bar Counsel Grabowsky and Deputy Bar Counsel Yourman to comment on the perjury of Mohler and Houston: Silence.

10. The failure of Bar Counsel Grabowsky and Deputy Bar Counsel Yourman to give notice of the relationships between Messrs. Ruth and Sharp: Silence.

11. The fact that Bar Counsel Grabowsky and Deputy Bar Counsel Yourman remained silent during my appeals to the BPR and the court of appeals with respect to the relationships between Messrs. Latto, Ruth and Sharp: Silence.

12. The fact that the judges of the court of appeals, when presented with evidence of misconduct by subordinate officials, refused to take any steps to rectify or remedy this misconduct. Silence.

From this analysis of the report, it is clear that Judith W. Rogers and her associates on the U.S. District Court's Committee on Grievances have engaged in a monumental attempt to cover up and prevent the disclosure of unlawful and pervasively unethical conduct by the judges of the court of appeals and their subordinate officials.

And when you compare this type of coverup with the attempted coverup in the "Watergate" matter, you can readily see the pervasiveness and the invidiousness of such conduct. In "Watergate" the coverup-ors and the coverup-ees were one and the same people. Given the human experience, it is to be expected that one who has engaged in illicit conduct will attempt to coverup and prevent disclosure of that conduct. We do not condone it, but we expect it.

Here, however, we have an entirely different type of coverup. Here, we have individuals, members of the Committee on Grievances, who have not engaged in any of the illicit conduct practiced against me in the court of appeals system. Here, we have individuals who have taken unto themselves one of the highest responsibilities an attorney can undertake, sitting in judgment of a fellow attorney, a situation in which the attorney has no alternative but to put his trust in the integrity of his or her fellow members of the Bar. The result in my case was an attempted coverup, and this attempted coverup was based solely on class and status discrimination. Judith W. Rogers and her associates have engaged in a very pervasive and invidious coverup, they have applied a couble standard. To Judith W. Rogers and her associates, those within their inner circle will be protected, and those not within their circle will be condemned if necessary to protect those within the circle. Such a mindset clearly disqualifies Judith W. Rogers for appointment to the District of Columbia Court of Appeals.

Putting aside for the moment, the attempted coverup, Judith W. Roger's participation in the reciprocal discipline proceedings against me constitutes a direct conflict of interest. If I am correct in my evidence, the wrongs practiced against me in the court of appeals give rise to a civil action by me against the District of Columbia under 42 U.S.C. sec. 1983. As chief legal officer of the District of Columbia it must

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[1] The exhibits referred to may be found in the committee files.

have been apparent to her that her office could better defend any such lawsuit if the U.S. District Court had rendered an adverse decision in my case.

And my Grievance Complaint in the U.S. District Court against the judges of the court of appeals and their subordinate officials also gives rise to a serious conflict of interest. First, as a high ranking legal officer of the District of Columbia, it was wrong for her to participate in the Grievance Committee's resolution of my complaint because that complaint involved other high ranking legal officers of the District of Columbia.

Senators. if there is any doubt in your minds as to the assertions I make herein, I attach hereto a conformed copy of the order of the U.S. District Court dated December 1, 1982, wherein the Court dismissed the Order To Show Cause and terminated all proceedings against me. (See Ex. G, attached.[1])

Finally, I would like to quote a part of a quotation by the BPR in affirming the finding of a violation against me by the Hearing Committee:

"To maintain public confidence in the Bar, it is necessary not only to avoid actual wrong doing, but an appearance of wrong doing." (BPR Report, footnote 5, at page 4.)

If this principle applies to me, should it not also apply to Judith W. Rogers?

Senator MATHIAS. I have a statement for the record submitted by the Senator from Missouri, Mr. Eagleton, supporting the nomination of Ms. Rogers. We will make that a part of the record.

[The statement of Senator Eagleton follows:]

STATEMENT OF SENATOR EAGLETON

Mr. Chairman, since you and I switched positions on this subcommittee in 1981, I have watched the nominations to the District of Columbia courts with interest, but without active participation—leaving the hearings in your competent hands.

I felt compelled to appear today, however, to add my personal congratulations to Judy Rogers. Ms. Rogers' nomination to the District of Columbia Court of Appeals is one of the finest selections we have seen in the years you and I have been reviewing District judge nominees.

In my opinion there has been a direct correlation during the last decade between Ms. Rogers' commitment and contribution to the District of Columbia's Home Rule government and that Assistant City Administrator for Intergovernmental Relations and D.C. Corporation Counsel—Ms. Rogers has brought intelligence, wisdom, dedication and ability. All of us in Congress and in the City who have worked with her owe her our gratitude and thanks.

I am pleased that the D.C. Nominating Commission and the White House have recognized such an outstanding talent for the bench. At the same time, I know the bench's gain will be the City's loss.

I wish you my best, Judy. Your background and training are superb; your credentials are impeccable; your commitment to public service is deserving of both this nomination and the appreciation of the local citizenry whom you have served so long and so well.

Senator MATHIAS. In addition, I would like to submit for the record a letter to the chairman of this committee, Senator Roth, from a colleague of ours in the House, Representative Stewart B. McKinney, Representative McKinney, as ranking minority member of the House District Committee, has known Ms. Rogers for a good number of years, and strongly supports her nomination.

[The letter referred to follows:]

HOUSE OF REPRESENTATIVES,
Washington, D.C., July 19, 1983.

Hon. WILLIAM V. ROTH,
Chairman, Committee on Governmental Affairs,
Washington, D.C.

DEAR BILL: It is a great personal privilege and pleasure to recommend to your Committee the nomination of Judith W. Rogers for a seat on the District of Columbia Court of Appeals.

[1] The exhibits referred to may be found in the committee files.

As a member of the Committee on the District of Columbia for the past thirteen years, I have been fortunate to work closely with Judy in each of the positions she has held with the District government—from a legislative aide in 1972 to her current position as Corporation Counsel.

She was instrumental in helping to achieve a compromise agreement which resulted in Congress granting Home Rule to the District in 1973. In 1975, Mayor Walter Washington recognized Judy's considerable talents and abilities and appointed her Chief Lobbyist/Liaison for the City, the City Council, and the Congress. In that capacity, Judy proved to be invaluable because of her detailed grasp of city government as well as the Home Rule Act, both of which should prove to be tremendous assets as a judge, as the District Court of Appeals is often called upon to interpret the City's home rule powers.

In 1979, Mayor Marion Barry appointed Judy to the position of Corporation Counsel. Since that time, she and her office have always answered, as well as handled, many of the thorny questions which arise as a result of possible changes to the Home Rule Act.

In short, I am confident that the confirmation of Judith Rogers will prove to be a valuable asset and addition to the District Court of Appeals. I recommend her highly.

Sincerely,

STEWART B. MCKINNEY,
Member of Congress.

Senator MATHIAS. With respect to the nomination of Mr. Beaudin, the staff has just completed the staff report, and we will hold that over for the next hearing.

The biographical and financial information that has been received from the nominees will be placed into the record at this point in the hearing.

[The information referred to follows:]

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

JUDITH W. ROGERS

A. Biographical information

Question 1. Name: (Include any former names used.)

Answer. Judith Wilson Rogers. Name used before 1968: Judith Ann Wilson.

Question 2. Address: List current residence address and mailing address.

Answer. 111 Third Street, N.E., Washington, D.C. 20002.

Question 3. Date and place of birth.

Answer. July 27, 1939; New York, New York.

Question 4. Marital Status: (Include maiden name of wife or husband's name.)

Answer. Divorced from Stephen C. Rogers.

Question 5. Names and ages of children.

Answer. None.

Question 6. Education: List institution(s), dates attended, degree received and date degree granted.

Answer. The Dalton Schools, Inc., New York, New York, 1944–1957; High School Diploma 1957: Radcliffe College, Cambridge, Mass., 1957–1961; A.B. Cum Laude, 1961: Harvard Law School, Cambridge, Mass., 1961–1964; LLB 1964.

Question 7. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Answer. Survey analyst, Conover-Mast Publishing Co.; 205 East 42 St., New York, New York; June 1961 to September 1961.

Legal research assistant, Prof. W. Barton Leach, Harvard Law School, Cambridge, Mass.; June 1962 to September 1962.

Staff aide, President's Committee on Juvenile Delinquency and Youth Crime, U.S. Department of Justice, Washington, D.C.; June 1963 to September 1963.

Law clerk, D.C. Juvenile Court, Washington, D.C.; August 1964 to November 1965.

Assistant U.S. Attorney for the District of Columbia, Washington, D.C.; November 1965 to June 1968.

Assigned to the D.C. Court of General Sessions (Nov. 1965–Nov. 1966) to handle misdemeanor jury and non-jury trials, preliminary hearings, motions, arraignments, and determination of charges to be filed against a defendant.

Assigned to U.S. District Court (Nov. 1966–June 1968) to handle special proceedings (habeas corpus, collateral attacks on convictions, extradition, civil commitments of the mentally ill). Assignments included analysis of Congressional legislation and preparation of appellate briefs.

General Counsel, Commission on the Organization of the Government of the District of Columbia; September 1969 to July 1971.

As general counsel I reviewed staff recommendations to change operations and responsibilities of the District Government, reviewed draft legislation to establish a new personnel system for D.C. employees, and supervised consultants who were examining youth services in light of the 1966 recommendations of the President's Commission on Crime in the District of Columbia. Two volume report (with appendix) issued by the Commission (House Document No. 92-317, August 1972).

Legislative Program Coordinator, D.C. Government, Washington, D.C.; September 1972 to December 1974.

Worked for the Assistant to the Mayor-Commissioner on the development of the Mayor's annual legislative program to Congress. I worked with departments and agencies to define and prepare preliminary draft proposals, and to obtain approval of a legally sufficient draft bill by the Corporation Counsel. I also worked with Congressional Committees on D.C. bills, including various home rule proposals and devoted substantial time to the bills which ultimately were enacted as the D.C. Self-Government and Governmental Reorganization Act of 1973, P.L. 93-198, Dec. 24, 1973, 87 Stat. 774.

Special Assistant to the Mayor for Legislation, D.C. Government, Washington, D.C. December 1974 to January 1979.

This promotion involved direct responsibility to the Mayor for his annual legislative programs to the Congress and D.C. Council, and for preparation of Executive Branch positions on Council, bills and federal bills affecting the District. My responsibility increased in the areas of drafting and analyzing legislative proposals, preparing testimony, and initiating and responding to inquiries about legislation. In 1977 I served as the Mayor's liaison to the President's Task Force on the District of Columbia with responsibility for preparing position papers and attending meetings of the task force.

Assistant City Administrator for Intergovernmental Relations, D.C. Government, Washington, D.C.; January 1979 to April 1979.

My responsibilities as Special Assistant to the Mayor for Legislation were combined with regional and national relations. My work focused on preparation of the annual legislative programs and development of a plan for assumption of regional and national duties.

Corporation Counsel, D.C., D.C. Government, Washington, D.C.; April 1979 to present.

As the chief legal officer for the District Government, my responsibilities include those of a state, county and municipal attorney. The Corporation Counsel has unlimited civil jurisdiction in administrative and judicial proceedings, prepares advisory and formal legal opinions which are binding on D.C. departments and agencies, and prosecutes crimes committed by juveniles and minor misdemeanor and regulatory violations committed by adults. This work is performed by approximately 120 attorneys who are assigned to five divisions. In recent years the duties and workload of the Corporation Counsel have expanded significantly, over the last decade as a result of court reform, federal statutes applicable to the states and the District of Columbia, the D.C. Administrative Procedure Act, home rule, and court decisions broadening the District's exposure to suit. See Annual Reports of the Corporation Counsel for Fiscal Years 1980 and 1981, copies available upon request.

Question 8. Government Experience: List any experience in, or association with Federal, State or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Answer. See answers to Question 7, Part A.

Also: Mayor's Search Committee for Chief of Police; 1974.

D.C. Law Revision Commission; 1979 to present.

D.C. Criminal Justice Supervisory Board; 1979 to present.

President's Task Force on the District of Columbia; 1977.

Mayor's Commission on Crime and Justice; 1982 to present.

Question 9. Business Relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership or other business enterprise, educational, or other institution.

Answer. Trustee, Radcliff College, Cambridge, Massachusetts; October 1982 to present.

Question 10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable and other organizations.

Answer. Courts and dates of admission:

U.S. Supreme Court; May 14, 1979.

U.S. Court of Appeals for D.C. Circuit; October 11, 1965.

U.S. District Court for the District of Columbia; June 21, 1965.

D.C. Court of Appeals; June 21, 1965.

D.C. Court of General Sessions (and predecessor Court); October 7, 1969.

Other: D.C. Bar Association; 1966–1967.

District of Columbia Bar; 1974 to present.

Pro Se and Pro Bono Committee, U.S. Judicial Conference for the District of Columbia; 1979 to present.

Committee on Grievances, U.S. District Court for the District of Columbia; April 1982 to present.

Capitol Hill Restoration Society; 1978.

Member, Board of Directors, Friends of D.C. Superior Court; 1972–74.

Member, Board of Directors, Wider Opportunities for Women; 1972–74.

Member, St. Marks Episcopal Church; 1981 to present.

Question 11. Political affiliations and activities: List all offices with a political party or any public office for which you have been a candidate. List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Answer. Financial contributions:

1982—Marion S. Barry Re-election Committee (D.C. Mayor); $1,000.

1973–1982—Presidential Election Campaign Fund; $1 each year.

1979—Breakfast with Winter (D.C. Councilmember Nadine Winter—Ward 6 (my Ward); $50.

1978—Committee for Washington (D.C. Mayor); $100.

1978—Committee for Washington (D.C. Mayor); $200.

1977—WCOPE; $15.

1976—Schroeder for Congress Committee (law school classmate); $50.

1975—Schroeder for Congress Committee (law school classmate); $25.

1974—Committee for Washington (D.C. Mayor); $50.

1973—Democratic Telethon; $25.

Question 12. Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievements.

Answer. Citation for Outstanding Performance by Mayor Walter E. Washington, for period April 1, 1977 to March 31, 1978.

Citation for Outstanding Service, Self-Determination for D.C. Coalition, presented following enactment of D.C. Self-Government and Governmental Reorganization Act in 1973, P.L. 93–138.

Question 13. Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Answer. None.

Question 14. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have written copies of and which are on topics relevant to the position for which you have been nominated.

Answer. During the past 5 years I have given a number of speeches relating to the Office of the Corporation Counsel. None have focused on the D.C. Court of Appeals.

Question 15. Selection: (a) Do you know why you were chosen for this nomination by the President?

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Answer. (a) My legal experience, skills, judgment and proven ability, as well as my standing in the legal and general community in the District of Columbia.

(b) The District of Columbia Court of Appeals, the highest court of the District of Columbia, was established by Act of Congress in 1970. Thereafter, in 1973, the District of Columbia was delegated substantial powers of self-government by Act of Congress, and the new form of government began to function on January 2, 1975.

My legal experience is directly relevant to the position for which I seek nomination. I have served as a law clerk in a District of Columbia court. I worked on the legislation, as an attorney in the Deputy Attorney General's Office at the Justice Department, which created the District of Columbia court system. I have been an Assistant U.S. Attorney for the District of Columbia. Moreover, I served as the gen-

eral counsel to the Congressional Commission which did the preparatory work used by the 93d Congress in enacting the D.C. Self-Government and Governmental Reorganization Act. I also worked on this legislation, as the Mayor's legislative coordinator, with local and federal officials and the Congressional Committees. Thereafter, in 1975, as the Special Assistant to the Mayor for Legislation, I handled the Mayor's annual legislative programs to the Congress and the Council of the District of Columbia. I have served since 1979 as the District of Columbia's chief legal officer.

My experience is, thus, extensive in District of Columbia law and may well be unique insofar as I have been directly involved in the development of the laws which created our court system and local form of government, as well as the laws enacted by that government. My involvement has fostered in me an appreciation for the nature of the interests of the federal and local governments, and in particular for the development of our legal system in the District of Columbia. My experience is also varied, affording me the chance to be a lawyer serving interests with different perspectives.

In addition, the position I seek is directly related to my interest and commitment to the legal profession and to public service. Indeed, consistent with the reasons which motivated me to go to law school, I have had the opportunity to be involved in the development of our governmental and judicial systems, in the enactment and enforcement of the laws applicable to the District of Columbia, and in the operation and direction of the District's chief legal office. Clearly, serving as a judge on the D.C. Court of Appeals will further fulfill my commitment to the legal system and, through law, to the Nation's Capital and the District of Columbia community.

My experience is also noteworthy since I have worked effectively with many persons and organizations of differing points of view. This was true in nearly every position I have held and my positions have necessitated that I uphold a point of view while seeking to persuade others, and if unsuccessful, to continue working with them in the future. I have clearly demonstrated my ability to perform effectively in such circumstances and to perform in a manner in accord with the highest professional and ethical standards. My nomination, and appointment, to the court would be consistent with the dignity and ability which are required.

B. Financial data (retained in committee files)

C. Future employment relationships

Question 1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Answer. Yes.

Question 2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Answer. No.

Question 3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Answer. No.

Question 4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

Answer. No.

Question 5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Answer. Yes.

D. Potential conflicts of interest

Question 1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

Answer. None.

Question 2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Answer. I own 100 shares of IBM stock.

Question 3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

Answer. I have been the Corporation Counsel of the District of Columbia from April 19, 1979 to present. Therefore, I have been substantially involved in numerous cases and matters in the Office and nominally involved in others.

Question 4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Answer. In several positions, I have had responsibilities, for the Mayor's legislative program to the Congress, and as the Corporation Counsel I serve as the chief legal officer for the District of Columbia. These positions are generally described in my answer to Question No. 7 in Part A.

Question 5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Answer. If confirmed and appointed a judge of the D.C. Court of Appeals, I will resolve any potential conflicts of interests arising from my service as the Corporation Counsel for the District of Columbia in the following manner: I will not participate in any case which is pending in the Office of the Corporation Counsel prior to the date of my appointment, or in any case involving a particular matter in which I was personally and substantially involved. If necessary, because of the volume of work handled by the Corporation Counsel's Office, I will confer with the Office of the Corporation Counsel to determine whether or not I was personally and substantially involved in a particular matter.

If confirmed and sworn into office, I will resolve any potential conflicts of interest arising from my direct ownership of stock, as I would resolve potential conflicts involving any other financial interest, by recusing myself from participation in any case in which a company in which I directly own stock is involved.

Question 6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any other legal barriers to your serving in this position?

Answer. Yes.

E. Legal matters

Question 1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Answer. No.

Question 2. Have you ever been investigated, arrested, or charged or held by any Federal, State or any other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

Answer. No.

Question 3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceedings or civil litigation? If so, provide details.

Answer. I sued for divorce. *Judith W. Rogers* v. *Stephen C. Rogers,* D.C. Superior Court, C.A. D 2674-78, granted 8-8-78.

Question 4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffice offense?

Answer. No.

Question 5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

Answer. None.

F. Questions concerning statutory qualifications, pursuant to District of Columbia Court Reform and Criminal Procedure Act of 1970, sec. 11-1501(b) of the D.C. Code as amended

Question 1. Are you a citizen of the United States?

Answer. Yes.

Question 2. Are you a member of the bar of the District of Columbia?

Answer. Yes.

Question 3. Have you been a member of the District of Columbia bar for at least 5 years? (Give year in which you became a member.)

Answer. Yes. 1965.

Question 4. If the answer to No. 3 is "no," (a) Are you a professor of law in the District of Columbia?; (b) Are you an attorney employed in the District of Columbia by the United States or the District of Columbia?; (c) Have you been eligible for membership in the bar of the District of Columbia for at least five years?; (d) Upon what grounds is that eligibility based?

Answer. Inapplicable.

Question 5. Are you a bona fide resident of the District of Columbia.

Answer. Yes.

Question 6. Please state the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last 5 years.

Answer. 111 Third Street, N.E., Washington, D.C.

Question 7. Have you maintained an actual place of abode in such area for at least 5 years?

Answer. Yes.

Question 8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nomination Commission?

Answer. No.

Question 9. Have you been a member of either Commission within the last 12 months?

Answer. No.

G. Status of tax liability.

Question 1. Would you state for the record whether all your taxes, Federal, state and local, are current as of this date?

Answer. Yes.

Question 2. Are you or any member of your immediate family presently involved in any controversy or litigation with tax authorities of the Federal Government, the District of Columbia, or any state or local governments?

Answer. No.

Question 3. Have you or any member of your immediate family ever been involved in such controversy or litigation at any time in the past with any Federal, District of Columbia, state or local government?

Answer. No.

Question 4. Have any tax liens, either Federal, District, State or local been filed against you or against any real property or personal property which you own either individually, jointly, or in partnership?

Answer. No.

Question 5. Have your taxes always been paid on time?

Answer. Yes.

Affidavit

I, Judith W. Rogers, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

JUDITH W. ROGERS,
LILLI M. BRUCE, *Notary.*

Date: July 11, 1983.

A. FRANKLIN BURGESS, JR.

A. Biographical Information

Question 1. Name: (Include any former names used.)

Answer. Alfred Franklin Burgess, Jr.

Question 2. Address: List current residence address and mailing address.

Answer. 5314 Dorsett Place, N.W., Washington, D.C. 20016.

Question 3. Date and Place of Birth.

Answer. March 15, 1943, Greenville, South Carolina.

Question 4. Marital Status: (Include maiden name of wife or husband's name.)

Answer. Married. Diana Martin.

Question 5. Names and ages of children.

Answer. Sarah Martin Burgess (3); Thomas Granville Burgess (1).

Question 6. Education: List institution(s), dates attended, degree received and date degree granted.

Answer. Philips Exeter Academy, 1958–1961, Diploma, 1961.
Princeton University, 1961–1965, A.B., 1965.
Harvard Law School, 1967–1968; 1969–1971, J.D., 1971.

Question 7. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Answer.

Dates of employment		Name of employer	Location	Title or description
From—	To—			
June 1965	May 1967	U.S. Peace Corps	Mukdaharn, Thailand	Teacher.
June 1968	September 1968	Chambers, Stein, Ferguson & Lanning.	210 W. 10th St. Charlotte, N.C.	Summer internist.
September 1968	June 1969	Charlotte Country Day School.	Carmel Road, Charlotte, N.C.	Teacher.
June 1969	September 1969	Wyche, Burgess, Freeman & Parham.	Camperdown Way, Greenville, S.C.	Summer associate.
June 1970	August 1970	Wilkie, Farr & Gallagher	1 Chase Manhattan Plaza, New York, N.Y.	Summer associate.
September 1970	August 1971	Time, Inc.	Prudential Bldg	Stringer.
October 1971	November 1971	Krieger, Chodash & Politan	921 Bergen Ave., Jersey City, N.J.	Temporary law clerk.
January 1972	July 1973	Hon. Levin H. Campbell, U.S. District Circuit Judge.	U.S. Courthouse, Post Office Square, Boston, Mass.	Law clerk.
October 1973	July 1977	Palmer & Dodge	1 Beacon St. Boston, Mass.	Associate.
October 1977	August 1982	Public defender service	451 Indiana Ave., N.W., Washington, D.C.	Staff attorney.
August 1982	Present	Public defender service	451 Indiana Ave., N.W., Washington, D.C.	Chief, appellate division.

Question 8. Government Experience: List any experience in, or association with Federal, State or local governments, including any advisory, consultative, honorary or other parttime service or positions.

Answer. (1) United States Peace Corps, English Teacher in Mukdaharn, Thailand (1965–1967).

(2) Law Clerk, Hon. Levin H. Campbell, United States District and Circuit Judge, Boston, Mass. (1972–1973).

(3) Attorney, D.C. Public Defender Service, Washington, D.C. (1977–Present).

Question 9. Business Relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership of other business enterprise, educational, or other institution.

Answer. New England Conservatory of Music, Secretary and Associate Trustee, 1975–1977.

The Daily Princetonian, Inc., Student Chairman, 1964.

Question 10. Memberships: List all memberships and offices held in professional, fratenal, scholarly, civic, charitable and other organizations.

Answer.

Name in full	Address	Type	From—	To—
Colonial Club	Princeton, N.J.	Social club	1963	1965.
Daily Princetonian[1]	Princeton, N.J.	Newspaper	1962	1965.
Smithsonian Associates	Washington, D.C	Cultural	1977	Present.
American Civil Liberties Union	New York, N.Y.	Legal-civic	1979	Present
Metropolitan Opera Guild	New York, N.Y.	Musical	1976	Present.
WETA	Washington, D.C.	Public radio and T.V.	1980	Present.
American Automobile Association	811 Gatehouse Rd. Falls Church, Va.	Auto Services	1980	Present.
American Bar Association	Chicago Il.	Legal	1976	Present.
D.C. Bar Association	Washington,D.C.	Legal	1977	Present.
Boston Bar Association	Boston, Mass.	Legal	1973	1977.
Common Cause	2030 M St. NW, Washington, D.C.	Legislative and legal action	1979	Present.

Name in full	Address	Type	From—	To—
National Coalition to Ban Handguns.	100 Maryland Ave. NE, Washington, D.C.	Legal legislative action	1980	Present.
Grace Episcopal Church [2]	Washington, D.C.	Church	1979	Present.
Palisades Citizens Association	Washington, D.C.	Civic	1979	Present.

[1] Chairman.
[2] Member Rector Search Committee.

Question 11. Political affiliations and activities: List all offices with a political party or any public office for which you have been a candidate. List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Answer. I have never been a candidate for public office. I have never held office of a political party or an election committee. I have been a registered Democrat for the last 10 years. In 1975, I distributed campaign literature in the campaign of Michael S. Dukakis for Governor of Massachusetts.

CAMPAIGN CONTRIBUTIONS

Date	Amount	Donee
May 18, 1980	$100	National Unity Campaign for John Anderson.
Feb. 20, 1980	50	Anderson for President Committee.
Sept. 3, 1979	50	Anderson for President Committee.
Mar. 22, 1979	50	National Committee for an Effective Congress.
1976	50	Carter for President.
1975	50	Dukakis for Governor.

Note: Since I no longer have any bank records for 1973–1977, the amounts and donees for that period are estimates only.

Question 12. Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievements.

Answer. I was graduated from Princeton University magna cum laude and elected to Phi Beta Kappa.

I was graduated cum laude from Harvard Law School.

Question. 13. Published Writings: List the titles, publishers and dates of books, articles, reports, or other published materials you have written.

Answer. There are none.

Question. 14. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have written copies of and which are on topics relevant to the position for which you have been nominated.

Answer. I have made no such speeches.

Question. 15. Selection: (a) Do you know why you were chosen for this nomination by the President?

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Answer (a). No.

(b) To answer this question, I must first state what qualities, in my view, a judge of the Superior Court of the District of Columbia should possess. The Superior Court is a court of general jurisdiction and therefore its judges must resolve disputes and preside over trials in varied areas of law, many of which are complex. This Court has, additionally, a high volume of cases in both criminal and civil matters. It is probably the one branch of government with which virtually every citizen at one time or another has close contact, as a litigant, a witness, a juror, or an interested observer.

The task of judging on this court is therefore demanding and sensitive. A judge should, of course, possess the fundamental legal tools of knowledge and analytical skills. In addition, the judge must combine open-mindedness with decisiveness, firmness with patience, intellectual capacity with commonsense, and dignity with understanding. Above all, a judge on this Court, as on any other, should possess an instinct for fairness, and a respect for the worth of all people who come before him or her.

A person who possessed all these qualities would be an exemplary judge. I cannot pretend to have them all now and it would be presumptuous to state without reservation that I will measure up perfectly to these demanding standards in all respects. Nevertheless, some aspects of my background do indicate that I possess enough of these qualities to fit me for this responsible position.

My academic achievements in college and law school show that I have the intellectual capacity to perform this work. My experience in both the civil and criminal side of law practice exposed me to the wide variety of legal problems that are likely to come before me in some form or other. My clerkship with Judge Levin Campbell, when he was a trial judge and an appellate judge, permitted me to watch first-hand, day-to-day, a judge with many of the qualities I have described.

My experience has exposed me to a variety of peoples and institutions. I grew up in the South and went to school and worked in the North. I lived and worked in Thailand for almost two years learning the language of the Thai people and living in their culture. I have worked as a lawyer for a large multi-national corporation, for municipalities, for charities, and for a wide variety of people, rich and poor. As a staff attorney for the Public Defender Service, I have investigated cases and interviewed people in their homes in all parts of this city, and have encountered a cross-section of the people of the District of Columbia in my daily work in the courts. All of this experience, I believe, has given me an appreciation for and tolerance of the diversity of people that is essential to a person who must administer justice even-handedly to rich and poor, individuals and institutions.

I am familiar with the courtroom. I have tried criminal and civil cases, and argued both kinds of cases in appeallate courts. Having appeared regularly in the District of Columbia Superior Court, I am familiar with its rules, especially on the criminal side, with its customs, and with its personnel. By virtue of my trial practice, I understand reasonably well the law of evidence. This experience, I believe, will help me decide issues and decide them correctly.

This background, I hope, has both broadened my understanding of people and sharpened my legal skills. I trust that, if my nomination is confirmed, my experience will help me demonstrate in some substantial way the qualities I believe essential in a good judge.

B. Financial Data (Retained in Committee Files)

C. Future employment relationships

Question 1. will you sever all connections with your present employers, business associations or business organizations if you are confirmed by the Senate?

Answer. Yes.

Question 2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Answer. No, except for voluntary, unpaid teaching activities upon invitation by law schools or bar associations.

Question 3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Answer. No.

Question 4. Has anybody made a commitment to employ your service in any capacity after you leave government service?

Answer. No.

Question 5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Answer. Yes.

D. Potential conflicts of interest

Question 1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

Answer. There are none, other than my representation of clients at the Public Defender Service.

Question 2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Answer. My present employment by the Public Defender Service presents a potential conflict of interest.

My wife is a physician licensed to practice in the District of Columbia, Maryland, and Virginia. It is possible that she could be called to testify in a matter coming before me. In addition, she is employed by Virginia Family Practice Associates, Inc.,

which might become a party in a matter coming before me, though since that firm's practice is solely in Virginia, that is a highly unlikely eventuality.

Additionally, all securities transactions and investments undertaken for the benefit of me and my family have been made by Ralph Apton, a registered investment advisor, and brokered through E. F. Hutton. These transactions are conducted on a discretionary basis by Mr. Apton, under broad authority granted by me and my wife. I have instructed him that, in the event my nomination is confirmed, he is not to buy and sell securities of companies located in the District of Columbia, Maryland or Virginia.

Question 3. Describe any business relationship, dealing or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

Answer. There is none.

Question 4. Describe any activity during the past ten years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Answer. Other than in my capacity as an advocate representing clients in litigation, I have engaged in no such activity.

Question 5. Explain how you will resolve any potential conflict of interest including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Answer. I would disqualify myself from participation in any matter in which my wife, family, and my wife's employers were parties or witnesses. I would disqualify myself from any matter in which a corporation or other enterprise in which I held an interest was a party, if that conflict came to my attention. I would disqualify myself from any matter in which one or more of the parties was a client of any Public Defender Service attorney while I was employed by that agency.

Question 6. Do you agree to have written opinions provided to the Committee by the general Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any other legal barriers to your serving in this position?

Answer. Yes.

E. Legal matters

Question 1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Answer. On January 26, 1979, the Honorable Robert Shuker issued an Order to Show Cause to me to explain my failure to appear before him for a preliminary hearing in D.C. Superior Court Criminal No. F-243-79. On February 2, 1979, I appeared before Judge Shuker and explained that I had neglected to place the matter on my calendar and had been at the D.C. Jail on another matter when I was due to be before him. Judge Shuker discharged the Order to Show Cause.

Question 2. Have you ever been investigated, arrested, or charged or held by any Federal, State or other law enforcement authority for violation of any federal, state, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

Answer. In December, 1964, a car I was driving collided with another car in an intersection. No one was hurt. I was charged in the Greenville, South Carolina recorder's court with violating a traffic signal. I was acquitted after a judge trial. I have had a search made for the record of this case and no record could be found.

Question 3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Answer. No.

Question 5. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

Answer. No.

Question 5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

There is none.

F. Questions concerning statutory qualifications, pursuant to district of columbia court reform and criminal procedure act of 1970, sec. 11-1501(b) of the D.C. Code as Amended

Question 1. Are you a citizen of the United States?
Answer. Yes.
Question 2. Are you a member of the bar of the District of Columbia?
Answer. yes.
Question 3. Have you been a member of the District of Columbia bar for at least 5 years? (Give year in which you became a member.)
Answer. Yes. 1977.
Question 4. If the answer to #3 is "no,"
(a) Are you a professor of law in a law school in the District of Columbia?
(b) Are you an attorney employed in the District of Columbia by the United States or the District of Columbia?
(c) Have you been eligible for membership in the bar of the District of Columbia for at least five years?
(d) Upon what grounds is the eligibility based?
Answer. Not applicable.
Question 5. Are you a bona fide resident of the District of Columbia?
Answer. Yes.
Question 6. Please state the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last 5 years.
Answer. July 1, 1978 to Present: 5314 Dorsett Place, N.W. Washington, D.C. 20016.
Question 7. Have you maintained an actual place of abode in such area for at least 5 years?
Answer. Yes.
Question 8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nomination Commission?
Answer. No.
Question 9. Have you ~~been~~ a member of either Commission within the last 12 months.
Answer. No.

G. Status of tax liability

Question 1. Would you state for the record whether all your taxes, Federal, State and local, are current as of this date?
Answer. They are.
Question 2. Are you or any member of your immediate family presently involved in any controversy or litigation with tax authorities of the Federal government, the District of Columbia, or any state or local governments?
Answer. No.
Question 3. Have you or any member of your immediate family ever been involved in such controversy or litigation at any time in the past any Federal, District of Columbia, State or local government?
Answer. No.
Question 4. Have any tax liens, either Federal, District, State or local been filed against you or against any real property or personal property which you own either individually, jointly, or in partnership?
Answer. No.
Question 5. Have your taxes always been paid on time?
Answer. Yes, except for estimated taxes in 1981.

Affidavit

I, A. Franklin Burgess, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

A. FRANKLIN BURGESS.

Date: July 13, 1983.
Subscribed and sworn to before me, this 13th day of July, 1983.

PATRICIA A. SMITH, *Notary.*

My Commission expires November 14, 1987.

Senator MATHIAS. The committee will stand in recess, subject to the call of the Chair.

[Whereupon, at 10:08 a.m., the committee was recessed, subject to the call of the Chair.]

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